Filed 3/23/09 In re A.G. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.G., A Person Coming Under the Juvenile Court Law.	B209266 (Los Angeles County Super. Ct. No. CK71615)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Sherri Sobel, Judge. Reversed and remanded.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O'Crowley, Senior Deputy County Counsel, for Plaintiff and Respondent.

J.G. appeals the order sustaining the allegations in the juvenile dependency petition filed pursuant to Welfare and Institutions Code[1] section 342, declaring his son A.G. a dependent minor under section 300, subdivision (a) and removing the minor from his care. J.G. claims the court erred in concluding that striking the child's face and buttocks with the father's hands constituted "serious physical harm" or placed him at risk of such harm. As we shall explain, we agree. The Department of Children and Family Services (the "DCFS") failed to demonstrate that J.G.'s conduct was sufficiently serious to justify the assumption of jurisdiction pursuant to section 300, subdivision (a) and thus, the court erred in ordering A.G. be removed from his father's care. Consequently, we reverse and remand.

FACTUAL AND PROCEDURAL HISTORY

A.G. (the "Minor"), born in June 2002, is the son of J.G. (Father) and D.D. (Mother). At the time the Minor came to the attention of the DCFS in February 2008, the child had been living with his mother who was also caring for six of his half siblings.[2] Pursuant to a family law order in place at the time, Mother had physical custody of A.G. and Father had unsupervised visitation several days a week.

On February 5, 2008, the DCFS received a referral indicating that the 5-year-old A.G. and his 3-year-old half sister had been left at home alone without adult supervision. When investigators arrived at Mother's home they also found it to be filthy. When interviewed, the child's older siblings informed the DCFS that Mother often left the children alone in the home for more than a day. A.G. was taken into protective custody,

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 A.G.'s siblings are parties to the original dependency petition sustained against Mother, but are not involved in the section 342 petition.

and placed in the home of his paternal grandmother (the "Grandmother"), where Father also lived. Mother was arrested.

A week later, the DCFS filed a dependency petition alleging that A.G. and his half-siblings came within provisions of section 300, subdivisions (a), (b), (g) and (j). Allegations, b-1, and j-1 concerned Mother's failure to supervise the children. Allegations a-1 and b-2 however, asserted that in 2006, Father had a violent physical altercation with an unrelated adult male which resulted in Father fatally stabbing the person; and that Father had suffered a criminal conviction for Corporal Injury to a Spouse/Cohabitant.[3]

On February 13, 2008, the court detained the Minor, and found Father to be the minor's presumed father. After the February 2008 detention hearing, Father moved out of the Grandmother's house so that the minor could remain placed there with the Grandmother.

The report prepared for the jurisdictional hearing stated that Father had been acquitted of all murder charges related to the 2006 stabbing. It also indicated that in 2004 after an argument and violent confrontation with Mother involving his breaking a car window, Father grabbed her by the neck, pushed her up against the car and caused her to suffer a "busted lip." Additional information showed that Father pled and was convicted of the misdemeanor offenses of vandalism and Corporal Injury to a Spouse/Cohabitant, that he received a sentence of 3 years probation and was ordered to complete a program for domestic violence counseling. The record shows that in 2005, the criminal court found that he had satisfied the requirements for domestic violence counseling.

The jurisdiction/disposition report further indicated Father had established a significant relationship with his son, and Grandmother corroborated that Father was a responsible and involved parent. Father told the DCFS that he would remain in the home of his mother for added support until he was able to find a job and that his first priority

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[3] The other allegations under section 300, subdivisions (b) and (g) pertained to the fathers of A.G's half siblings.

was caring for the Minor. The DCFS stated: "the child's … safety can be ensured while in the home of the father . . . and it does not appear that the child's safety is in any substantial danger in the home and care of the father . . . at this time contingent on the father . . . continuing to reside in the home of the paternal grandmother . . . ."

At the March 5, 2008, jurisdictional and dispositional hearing, the court found A.G. was a person described by section 300, subdivision (b) based on the conduct of the Mother. The court dismissed the subdivision (a) and (b) allegations pertaining to the Father. Thereafter, the court found, pursuant to section 361.2 that Father was a previously noncustodial, nonoffending parent, who was ready, willing and able to have A.G. placed with him. The court ordered the Minor placed with Father on the condition that he continue to reside in appropriate housing. Although the court did not order that Father and the minor remain housed with the Grandmother, the court did observe that appropriate housing at that point was with the Grandmother. Father also agreed to six months of family reunification services. The court also ordered that no corporal punishment be used in the home.

After the March jurisdictional/dispositional hearing, Father moved back into Grandmother's house with the Minor.

According to a DCFS report prepared for an interim review hearing in June 2008, it appears that the Minor had adjusted to living in the home with his Grandmother and Father. However, by May 2008, Father's relationship with the Grandmother was strained. The report indicates that Father and Grandmother engaged in constant verbal conflicts concerning finances and the care of the Minor. The Grandmother perceived that Father had failed to contribute financially to the household. In May 2008, without notifying the DCFS, Father took the Minor and moved out of the Grandmother's home for six days; they went to stay with a cousin. Grandmother expressed a concern that during the time Father and the Minor were away, they moved around a lot and the child did not have a bed. When the DCFS contacted Father he stated that he had found an apartment, paid the down payment and was planning to move out of the Grandmother's home. Mother also complained that on several occasions Father had failed to transport

the child for scheduled visits with Mother. On May 29, 2008, the DCFS met with the Father to discuss exposing the child to ongoing verbal conflicts, multiple moves and visitation issues. Father acknowledged the concerns and agreed to participate in family preservation programs; he also stated that he was going to move in early June.

At the subsequent June 4, 2008, interim review hearing, where neither the Father nor his counsel were present, the court, counsel for Mother, the Minor and the DCFS discussed the issue of the Father and the child moving in and out of Grandmother's home. The court noted its concern about the stability of the Minor's housing: "If [Father] wants to move out of the Grandmother's house, the Department has to approve. The Department's approved nothing. This kid is hither and yon. We don't know where he is. I expect the Department to do an investigation and see exactly what's what. The fact of the matter is you may have to file something. And if that's the case, detain him with Grandma. Don't put him in foster care. Even Grandma is telling you there is a problem here. [¶¶] I can't do anything. The Department is going to have to do its investigation and either file or not file. If you have a problem, call the social worker. Minor's counsel also. There really isn't anything I can do if, in fact, the Department thinks that the kid is fine. I don't think the kid is fine. I think the Department doesn't think the kid is fine, and I think the Department needs to do something about it."

On June 11, 2008, the DCFS contacted Father and informed him he had to reside with the Grandmother and that he could not take the child overnight anywhere without the DCFS approval. Father agreed and indicated that the arrangements for the apartment had fallen through and that he would be staying at the Grandmother's. Nonetheless, the next day Father and the Grandmother got into another verbal conflict over Grandmother's request that Father give her money for gasoline. Father left the Grandmother's home, taking the child with him. The Grandmother told the social worker that during the argument Father "got in my face and physically threatens [sic] [me]," though she denied that he physically abused her. The Grandmother said she was concerned for the child's safety, that she was afraid of Father and that he needed counseling to address his anger. When contacted and asked about the incident, Father acknowledged that he had left with

his son and gone to a motel because after the argument the Grandmother kicked them out and stated that she would not watch the child.

The DCFS took the child into protective custody. When the Minor was interviewed on June 13, 2008, he stated that he did not want to be with his Father because Father is mean and that he hits and yells at the child. When questioned further about being hit, the child told the social worker: "He hits me with his hand on the butt and told [sic] me to go to bed."

On June 18, 2008, the DCFS filed a section 342 petition containing allegations that A.G. was a person described in subdivisions (a) and (b). In allegation a-1and b-1 the petition alleged: "On prior occasions, the [Father] physically abused the child by striking the child's face and buttocks with the father's hands. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child is afraid of the father and does not want to remain in the father's home and care due to the father's physical abuse of the child. Such physical abuse of the child by the father endangers the child's physical and emotional health, safety and well being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage and physical abuse." Allegations a-2, b-2 and b-3 described the incident of domestic violence which occurred in 2004 and for which Father suffered the misdemeanor conviction. The petition alleged that the 2004 incident of domestic violence in the child's presence endangered the child's physical and emotional health, safety and well-being and placed the child at risk of future harm.

The detention report prepared in support of the petition described the ongoing confrontational relationship between Grandmother and Father, the incidents of the Father moving in and out of the Grandmother's home in May and June 2008, the verbal confrontation between Father and Grandmother on June 12, 2008, the Minor's statement to the social worker that Father had spanked him and told him to go to bed and Father's 2004 convictions. The detention report further disclosed that in late April 2008, Mother informed the DCFS that Grandmother had called the police in February 2008 (prior to the jurisdiction and disposition on the original petition) claiming that Father had physically

abused the Minor. Specifically Grandmother stated that Father had "slapped" the minor on the face with his hand because the Minor had said a "bad word." According to the Grandmother the police did not do anything because there were no bruises on the child. The report further indicates Father subsequently discussed the incident with the social worker, acknowledged that it had occurred and he agreed to attend a parenting class but had not yet attended those classes. The report also disclosed the social worker's concern that based on interactions and conversations with Father, Father suffered from mental health problems that impaired his ability to parent and that Father should be evaluated.

The DCFS summarized that in view of Father's failure to provide stable, suitable housing for the child, his failure to comply with the order that he not remove the child from the Grandmother's home, Father's history of domestic violence with the Mother and continued domestic disputes with the Grandmother, the child's fear of Father and having been hit by Father, the Minor be detained.

On June 16, 2008, the court ordered the child to be detained. Although the child was originally placed with his maternal aunt, he was later placed in a foster home.

The Jurisdiction/Disposition report recounted the same facts and circumstances disclosed in the detention report. The Jurisdiction/Disposition report also contained statements by the Father that the Grandmother suffered from an emotional imbalance for which she took medication, that she was emotionally abusive to family members and abused alcohol. The report also contained evidence of a journal entry from the foster mother that prior to the minor's first visit (after his detention) on June 25, 2008, the child stated that he did not want to visit with the Father because he "beats him with his hands and objects."

At the jurisdiction/disposition hearing on July 8, 2008, Father argued the petition should be dismissed. Specifically, he pointed out that the allegations (a-2, b-2 and b-3) all pertained to the 2004 domestic violence incident which had been part of the original petition against Mother and dismissed by the court at the jurisdiction hearing in March 2008. He further argued that the allegation that Father slapped the minor on the face in February 2008 occurred prior to the disposition of the original petition, did not result in

criminal charges and that the DCFS did not investigate it. He further complained that the facts supporting allegation a-1 (and b-1) are not described in detail in the reports, and that the real reason for the petition concerned the problems Father and the Grandmother had and Father's moving out of the Grandmother's house without notice to the DCFS. Father's counsel remarked that at most the petition should have pled section 300, subdivision (b) inappropriate discipline. Counsel for the DCFS concede that the DCFS did not file what they should have—that they should have filed allegations that centered on Father's failure to provide suitable housing in violation of the court's order. Nonetheless, the DCFS defended its allegations as pled arguing that Father's domestic violence history and his behavior towards the child and Grandmother showed that Father has a pattern or violent behavior that is continuing.

After argument, the court stated: "[T]he court finds by a preponderance of the evidence that this child is a child described under W&I code section 342. The child is again described under another subsection of 300; in essence, it's a 387 since it is a removal from a parent but the Department never gets that right. A-1 is sustained. A-2 is stricken. B is dismissed. . . . The Department knew or should have known this at the very beginning of the case. This is old, old, old news." The court declared the child a dependent under section 300, subdivision (a) and ordered the child removed from Father's custody "for the reasons stated in the sustained petition."

Thereafter Father timely appealed from the "07/08/08" order which he described as "WIC 361(b): Substantial danger exists to the physical health of minor(s) and/or minor(s) is suffering severe emotional damages, and there is no reasonable means to protect without removal from parent's or guardians physical custody."

DISCUSSION

On appeal, Father argues neither the juvenile court's jurisdictional findings sustaining the section 300, subdivision (a) allegation in the section 342 petition, nor the

dispositional order are supported by sufficient evidence. Before we address the merits of these issues we first dispose of a number of threshold matters raised by the DCFS.

A. Sufficiency of the Notice of Appeal, Waiver and Mootness

First, the DCFS asserts that this court cannot consider the lower court's jurisdictional findings because Father's notice of appeal only listed the dispositional order. While Father did not state his challenge to the jurisdictional findings in the notice of appeal, we nonetheless conclude the notice of appeal was sufficient to preserve his challenge to the jurisdictional findings of the juvenile court. A notice of appeal shall be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 8.400(c); see also Cal. Rules of Court, rule 8.100(a).) Section 395 provides that: "A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. . . ." In juvenile dependency matters, all orders starting chronologically with the dispositional order are appealable judgments, except an order setting a permanency planning hearing. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) Although jurisdictional findings are not appealable, an appeal from a dispositional order allows an appellate court to consider errors in connection with nonappealable jurisdictional findings. (See *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112; see *In re Cynthia D.* (1993) 5 Cal.4th 242, 249 [A parent may seek review of both the jurisdictional and dispositional findings on an appeal from the dispositional order].) In light of the liberality in construing notices of appeal, we construe an appeal from the dispositional order as an appeal from all aspects of the jurisdictional and dispositional orders.

Second, DCFS asserts Father "forfeited" his complaint about the jurisdictional finding because "he did not raise the issue in the trial court." Specifically, DCFS relies on a remark Father's counsel made at the jurisdictional and dispositional hearing that this would be at most , a b-1, physical inappropriate discipline. DCFS claims that counsel's comment was a tacit admission that juvenile court jurisdiction existed because of the father's physical discipline of the child. We do not agree.

The DCFS cites these remarks out of context. A review of the record reveals that Father's counsel objected to the section 300, subdivision (a) and (b) allegations in the section 342 petition. Counsel complained that the allegations concerned matters that had already been considered and rejected by the court in connection with the original section 300 petition or concerned events—such as Father slapping the child on the face—which predated the dispositional order on the original petition. He further complained that the facts in support of allegation a-1 (the finding sustained by the court) were not described in detail in the reports, and that the real reason for the petition concerned the problems Father and the Grandmother had and Father's moving out of the Grandmother's house without notice to the DCFS. In referring to subdivision b—inappropriate physical discipline—it appears that Father's counsel merely sought to underscore the argument that DCFS had failed to state the appropriate allegations in the petition and did not have sufficient evidence to support the subdivision (a) allegations. Moreover, even were counsel's comments construed as an admission that evidence existed to support a finding under section 300, subdivision (b) such an admission would not give rise to the inference that Father waived any complaint about the exercise of jurisdiction under an entirely different sub-section. Section 300, subdivision (b) allows for the assumption of jurisdiction based on the failure to protect, while subsection (a) requires a showing of intentional physical abuse. Thus, Father, in our view, did not waive his challenge to the jurisdictional findings.

Finally, DCFS asserts Father's challenge to the jurisdictional findings is moot because Father has not challenged the allegations in the original amended petition, concerning Mother and the child and thus, the court's exercise of jurisdiction over the child is appropriate at least with respect to section 300 allegations in the original petition. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 ["[T]he minor is a dependent if the actions of either parent bring her within one of the statutory definitions of dependent"].) It is true that A.G. would be a dependent child of the court even if we were to reverse all findings against Father, but those findings matter nonetheless. As Father argues, the adverse findings can affect his progress through the dependency process. Indeed they

supported the dispositional order that resulted in the removal of the child from Father's placement. In addition, the findings could affect Father in the future, if dependency proceedings were ever initiated, or even contemplated, with regard to the Minor or any of Father's other children. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 [appeals in dependency matters are not moot if "the purported error is of such magnitude as to infect the outcome of [subsequent proceedings]. . ."].) Consequently, we conclude Father's challenge to the jurisdictional findings is not moot.

B. The Section 342 Petition

In pertinent part, section 342 provides: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a *subsequent* petition. . . . [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition under this section." (Italics added.) As stated in *In re Barbara P.* (1994) 30 Cal.App.4th 926, 933, "When a minor has been declared a dependent child and the department alleges new facts or circumstances sufficient to find that the minor should be found to be a dependent child, the department files a subsequent petition, alleging the new information. . . . (§ 342.)"

At the jurisdictional hearing the juvenile court determines whether the allegations in the petition that the minor comes within section 300 (and therefore within the juvenile court's jurisdiction) are true. The court's jurisdictional findings must be based on a preponderance of the evidence. (See § 355.) If the court finds jurisdiction under section 300, it declares the child a dependent of the juvenile court and proceeds to the disposition phase, where the court considers whether the child should be removed from the parents under section 361.[4]

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[4] The guidelines and limitations for removal of a child from the custody of the parents are set forth in section 361. Section 361 provides, in pertinent part:

At the dispositional phase of dependency proceedings the burden of proof is clear and convincing evidence. (See § 361; *In re Sheila S.* (2000) 84 Cal.App.4th 872, 881.) On appeal, the "substantial evidence" test is the appropriate standard of review for both the jurisdictional and dispositional findings. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) The term "substantial evidence" means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. (See *In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) With these principles in mind, we examine appellant's contentions.

The court sustained a finding under section 300, subdivision (a) that: "On prior occasions, the [Father] physically abused the child by striking the child's face and buttocks with the father's hands. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child is afraid of the father and does not want to remain in the father's home and care due to the father's physical abuse of the child. Such physical abuse of the child by the father endangers the child's physical and emotional health, safety and well being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage and physical abuse."

> "(c) A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5) . . . .
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> "(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . ." (§ 361, subd. (c).)

Section 300, subdivision (a) applies if: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm."

Here DCFS all but concedes that the evidence in the record does not support the finding that Father had inflicted serious physical harm upon A.G. Even if credited as true, the evidence disclosed in the DCFS reports, namely, that (1) on June 13, 2008 the minor reported to the social worker his father hit him on the buttocks with his hand and told him to go to bed; and (2) in February 2008 Father slapped A.G. on the face for using a bad word, is not sufficient to support a finding of "serious physical harm" under subdivision (a). A spanking is not in and of itself "inappropriate," and there was no evidence that the one incident of spanking the Minor described was, for instance, inappropriate because it was excessively forceful or because it was administered for any reason other than normal and appropriate discipline.[5] (See § 300, subd. (a) ["For purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury"].) Nor was there any evidence that these two incidents caused A.G. to suffer a serious physical injury or left marks or bruising on his body. (Compare *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438-439 [finding the court could assume jurisdiction under subdivision (a) based a couple of incidents of striking a three year old with a belt on the stomach and hands—once because he would not write out the letter "B" and once because he had sprayed perfume in his own eye—and where one of those incidents left

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[5] We do note, however, that it appears Father violated the court's March 5, 2008 dispositional order that precluded the use of corporal punishment in the home. Nonetheless, the incident of spanking at issue does not appear to have been sufficiently serious to sustain the subdivision (a) allegation.

the child with marks on his hands].) There is no evidence that Father hit the child with excessive force, or hard enough to cause him lasting injury. In fact, the record discloses that the incident in February 2008 when Father slapped the child on the face for saying a bad word did not leave any marks or bruises. Moreover, there was no evidence that he had ever struck the child in anger or while under the influence of drugs or alcohol.

In addition, there is no evidence of a pattern of abuse or repeated inflictions of injuries on the child. It is true that in late June 2008 shortly before his first post-detention visit with his father A.G. reportedly told his foster mother that father "beats him with his hands and objects." It is unclear what A.G. was referring to when he said this; there is no evidence or reports elsewhere in the record of the child being stuck with any "object" other than Father's hands. Furthermore, it does not appear that this statement to the foster mother was ever investigated so it is impossible to determine whether the child was referring to, at least in part, to the two incidents previously reported or something else. In our view, the minor's ambiguous statement to the foster mother does not amount to substantial evidence; it is not specific, solid, reasonable or credible evidence to support a finding under section 300, subdivision (a) that A.G. had suffered serious physical harm inflicted nonaccidentally upon the child by the child's parent.

This notwithstanding, DCFS argues that the evidence supported a finding under subdivision (a) that the minor was at risk of severe physical abuse in the future. DCFS argues Father's history of verbal confrontations involving Grandmother, the 2004 criminal conviction for domestic violence against Mother, his killing of another person in 2006, and his taking the child from Grandmother's home and moving the child without DCFS' approval placed A.G. at risk of serious of physical harm.

DCFS has not convinced us that this evidence is relevant under section 300, subdivision (a) or the sustained allegation. The 2006 stabbing incident resulting in the death of another person, (Father's arrest, trial and acquittal) is immaterial to this petition. It had no connection to the minor and has been twice rejected by the juvenile dependency court as a basis to assume jurisdiction over this child. Likewise, the 2004 criminal conviction for domestic violence against Mother has also been rejected by the lower court

as a ground for jurisdiction under section 300, subdivision (a). While A.G. was the subject of the dispute between the parents that prompted the incident, that conviction had nothing to do with physical discipline or abuse of the minor. Similarly the ongoing verbal conflicts between Grandma and Father that concerned financial support and caretaking responsibilities of A.G., certainly raise a number of serious questions about whether A.G. and his father should reside with Grandma. This evidence does not, however, support a finding that the child is at risk of serious physical harm and thus should be removed from Father's care.

Thus, the only remaining evidence DCFS relies upon is Father's failure to provide A.G. stable and appropriate housing. Father's inability to provide stable, DCFS-approved housing ran afoul of the court's jurisdictional/dispositional orders on the original petition and was the chief concern the court expressed at the June 4, 2008 review hearing. It prompted the court to recommend the DCFS "to file something" to address the situation. Father's failure to provide a child with the necessities of life, including adequate shelter may have supported a jurisdictional finding under section 300, subdivision (b). [6] But the section 342 petition does not contain any allegation under 300, subdivision (b) concerning the ongoing housing issue. Instead the sustained allegation a-1 (and the identical b-1 which the court dismissed) pertains only to Father's alleged physical abuse of A.G. The Father's conduct of moving the child is not relevant to the sustained allegation a-1; it is not evidence that Father would abuse the child or use inappropriate discipline on A.G. It does not indicate the child is at risk of serious physical harm under section 300, subdivision (a).

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[6] Likewise, we observe this evidence likely could have supported a section 387 petition pursuant to which the court could have ordered a change in placement without the additional requirement that the court make the jurisdictional findings under section 300. Indeed, the court may order a change in physical custody or placement under section 387 based on sufficient evidence that the previous disposition has not been appropriate for the child.

In view of all of the foregoing we simply cannot find that sufficient evidence supports the juvenile dependency court's jurisdictional finding that A.G. is a minor described in section 300, subdivision (a) as alleged in the section 342 petition.[7] In addition, because the jurisdictional finding is the sole basis for the dispositional order, it too cannot stand and must be reversed.

DISPOSITION

The juvenile court's orders are reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WOODS, J.

We concur:

PERLUSS, P.J. **JACKSON, J.**

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[7] We intend that nothing in our opinion is meant to imply that Father acted appropriately in disciplining A.G. Nor do we suggest that Father is a model parent, son, or spouse. On the record before us, it appears Father struggles with personal issues, including anger management. These matters challenge him and may indicate a need for additional support and guidance to act as an effective parent. These matters notwithstanding, our inquiry is limited to whether the evidence presented is legally sufficient to support the allegation sustained. It is not. Our conclusion simply expresses the view that the evidence presented was insufficient to support the exercise of jurisdiction under section 300, subdivision (a).